

**JANUARY 17, 2006**

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FLOOR DEBATE

January 17, 2006    LB 57, 1107-1111

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK:    Good morning.    Welcome to the George W. Norris Legislative Chamber.    Our chaplain of the day is Pastor Paul Coen from the Luther Memorial Lutheran Church in Syracuse, Nebraska, Senator Heidemann's district, District 1.    Pastor, please.

PASTOR COEN:    (Prayer offered.)

SENATOR CUDABACK:    Thank you, Pastor Coen, for being with us this morning.    We appreciate you being here.    I call the ninth day of the Ninety-Ninth Legislature, Second Session, to order.    Senators, please record your presence.

CLERK:    I have a quorum present, Mr. President.

SENATOR CUDABACK:    Are there any corrections for the Journal?

CLERK:    I have no corrections, Mr. President.

SENATOR CUDABACK:    Any messages, reports, or announcements?

CLERK:    Mr. President, I have a Reference report, referring LB 1051-1079 (also LB 964).    I also have a hearing notice from the Retirement Systems Committee.    That's all that I have, Mr. President.    (Legislative Journal pages 341-342.)

SENATOR CUDABACK:    Thank you, Mr. Clerk.    We now go to the first agenda item, introduction of new bills.

CLERK:    Mr. President, new bills.    (Read LB 1107-1111 by title for the first time.)    And that's all that I have at this time, Mr. President.    (Legislative Journal pages 342-343.)

SENATOR CUDABACK:    Thank you, Mr. Clerk.    Next agenda item, General File, special order, LB 57.    Mr. Clerk, inform the body where we are.

CLERK:    Mr. President, on LB 57 on General File, discussed last Friday.    It's a bill for an act...introduced by Senator Foley.

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(Read title.)    When the Legislature left the issue Friday, Mr. President, pending was a motion by Senator Chambers to reconsider the vote on his amendment, specifically FA199.

SENATOR CUDABACK:    Senator Chambers, to open on the reconsider motion. You already opened, but we are continuing.

SENATOR CHAMBERS:    Thank...Mr. President, what...am I speaking on my motion to reconsider?

SENATOR CUDABACK:    You are.

SENATOR CHAMBERS:    Okay, so this is my first time, rather...

SENATOR CUDABACK:    Yes.

SENATOR CHAMBERS:    ...than an opening, right?

SENATOR CUDABACK:    As you know, we are starting...but you're not opening. You are simply talking on your reconsider motion.

SENATOR CHAMBERS:    I didn't hear that, but I'm going to take this as my first time and say whatever I've got to say the first time, and go from there. Thank you.

SENATOR CUDABACK:    Yes.

SENATOR CHAMBERS:    Members of the Legislature, what this motion does is to strike "unborn child," that term, wherever it appears, and substitute the word "fetus" or "a fetus," as is appropriate. This bill is preposterous, it is ridiculous, it is unenforceable, and it makes a mockery and a travesty of the law-making process. And if it winds up in the statute books, it will make a travesty and a mockery of our laws. Nebraska will be a byword among all of those people who can think and reason. I started to assume my biblical brogue this morning, but I think I shall save that for another day. To show how backward the Catholic Church has been on this issue, some of their angelic doctors...let me not just use terms without explaining them. A fellow who was supposed to be bright, in the early days of the church, was given a label. Some were angelic doctors, some were

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cherubic doctors, and other such nonsensical terms, which if the man on whom it had been hung was going to comply with the scriptures, he would have said, no, a term like that signifies overweening pride, and I will not allow you to refer to me as the angelic doctor or the cherubic doctor. Thomas Aquinas was one who carried this title. I have no way of knowing whether he was addressed in that manner when he walked this earth. But I know in the courses that I took at Creighton, a Jesuit school, that was what was hung on him in the textbook, in reading materials, and also by the professor who happened to be in front of the class. So the angelics and the cherubics got together and tried to figure out how human beings reproduce. Now they knew it took a male and a female, but they couldn't figure how all of these other activities took place and a human being would result from a union between a male and a female, especially when it did not always occur. So they came up with the notion of a homunculus, a little man, a little-bitty creature who was in the sperm, and that's what the man transmitted to the woman, and that little homunculus was like the seed that Jack put in the ground one night, and the next day there was a beanstalk. The homunculus grew and he grew and he grew, until bingo, a human being. But they never did explain how a little man was transmogrified into a little woman. There has always been great ignorance surrounding things that are very basic to human beings. Whenever the ones doing the explaining did not have an answer, they filled in what they thought...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...or what seemed to them would be accepted. So today we have a bill before us, brought by the "angelic doctor," Senator Michael Foley, and it provides in the law things which should not be there. So my motion was to strike language which is not scientific, which is not precise, and insert a term that describes what it is we're talking about. I would strike the language relative to "unborn child" and substitute it with "fetus" or "a fetus," where appropriate. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. We're discussing the reconsideration motion on FA199 offered by

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Senator Chambers to LB 57. (Visitors and doctor of the day introduced.) On with discussion, motion to reconsider. Senators wishing to speak, Senator Foley, Senator Chambers, Senator Landis. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. Senator Chambers, you need not be so formal as to call me Michael. We've known each other long enough now that you can just call me Mike. My mother used to call me Michael, and when she did that, I knew I was in serious trouble. But I do want to address some points that Senator Landis raised last week. He raised some interesting questions, and I promised him I'd get back on the record and talk about those issues a little bit, and if my responses are not adequate, we can go into it deeper, either today or whenever we can. But in any event, he raised, I think, three different points. One was the concept of consent, because the bill provides that any medical procedure performed with the consent of the mother would not be included. And he said, well, what about the case where the mother may not be able to give her consent, express consent? And that's a good question. I think the concept of medical consent is now so well established in medical practice that we need not address it legislatively, because it's an everyday occurrence in emergency rooms, where a patient is admitted, automobile accident being probably the best example, where that patient is not able to give express consent for a medical procedure. Yet the doctors don't sit around and twiddle their thumbs and say, well, gosh, I guess we can't treat this guy because he can't give his consent. No, they go forward with treatment. So the concept of implied consent is well established in medical practice, and that concept would apply in these instances, as well. Senator Landis also raised the question, well, what if the woman engages in certain conduct with another person and says, for example, to her boyfriend, go ahead, hit me with a baseball bat. You don't want to go there? Fine. We'll leave that one alone. Okay, very good, we'll leave that one alone. Maybe I didn't understand your question. The third question that I think Senator Landis raised was, could I think of an example where the mother was not harmed, was not assaulted, but the unborn child was...or did suffer serious bodily injury? Could there be such a case? And I think, yes, very...most definitely, there could be a case, and I don't think

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this is far-fetched. There's a drug on the market called Avodart, A-v-o-d-a-r-t. It is produced by a company called GlaxoSmithKline. To the best of my understanding, it is only prescribed for men. It's prescribed for prostate difficulties. And this particular drug can be very, very dangerous for the unborn child. In fact, the official warnings on this drug, were it ever prescribed to you, would inform you of that. And the information that I've got off the Glaxo...excuse me, off the Food and Drug Administration web site is that women and children should never take or be near Avodart. In fact, it says...goes on to say, Avodart can pass through the skin; therefore, women who are pregnant or may be pregnant should not even touch Avodart, because it can pass through their skin and may cause a birth defect in their male baby. Men taking Avodart should not donate blood until at least six months after their last dose of Avodart, to prevent a pregnant woman from possibly receiving Avodart through a blood donation. Now here's the hypothetical situation: Suppose a man has been...has this drug in his possession, and he intends to cause damage to someone else's unborn child. He could pass a handful of these pills to a pregnant woman, or maybe even grind up a pill or two and stick it in her food,...

SENATOR CUDABACK: One minute.

SENATOR FOLEY: ...so that she's exposed and the child is exposed to this drug. The woman herself, depending on the dosage, may have absolutely...it may have absolutely no consequence whatsoever to her, nothing whatsoever. No assault has been committed against her, but the unborn child may be born with a birth defect because of the presence of Avodart in the woman's system. And Avodart is but one example. There are many, many other pharmaceuticals on the market that are very, very dangerous to unborn children. Thalidomide is the example that one would think of from the 1950s. Thalidomide is still on the market today, and obviously, is not prescribed to pregnant women, but it's used for other purposes. So I hope that's responsive, Senator Landia. If not, we can go further. But thank you for the time, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. On with

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discussion.    Senator Landis, motion to reconsider.

SENATOR LANDIS:    Thank you, Mr. Speaker, members of the Legislature.    That was helpful, appreciate that.    If I understand it, I think you first said, to the extent that consent is mentioned in the bill, implied consent is the same thing, and when we use consent, we mean implied consents, as well.    I hope I'm not overstating it, but I think that's a fair...okay.    An example of the engaged activity that Senator Foley made reference to was, in fact, one of his own hypotheticals.    I was trying to think of one at the time, and I was trying to get one that was not sexual in nature (laugh), which is why I think it was relatively far-fetched.    And I'll come back to that question in a second.    It seems to me that if I get the third one, the third one is, there might be something which would not cause pain or suffering to the mother that would cause injury to the fetus, unborn child, and that that could constitute an assault under the bill, even though the woman was not assaulted.    I think that's right?    Okay.    I think maybe we've suffered...we've put in "harm or injury" instead of assault.    I'm not so sure that giving a woman a drug against her will and without her knowledge may not be an assault, but that's an open topic.    And I found it an interesting thing, because the topic that I wanted to get into and engaged was, what happens if it, in fact, relates to the woman's own behavior?    What if she's engaged in behavior...and in fact, we both suffered, I think, with the difficulty of self-aimed behavior like drinking alcohol, like using drugs, creating some kind of a dependence in the child.    And so, let me ask another question, with time to think, because obviously, we get considered answers here, upon reflection.    Can you describe for us, on your own time, the acts that a woman could commit and herself be guilty of this crime?    What...I think it takes some time to think.    I'm not putting you on the spot, like, give me an immediate answer.    But I would say this.    I notice that only some things of the woman's behavior are, in fact, exempt from coverage of the act, which makes me think that, in fact, there are things that a woman could do which would make her subject to this act, as well, because it...there are exceptions to the behavior that apply to her, and if she wasn't inside that body of exceptions, I think she would be subject to the act.    Upon reflection, next time you talk, if

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you would, I would be interested in knowing what are the actions that a woman could do--a description of them--that would make her subject to the act, because if I get it right, she doesn't get a blanket exemption here, by any means. If she commits certain things, or certain acts, she's exempt from it. But if her actions fall outside those things, she herself could be the assailant, and I'm interested in a fair description of the acts of a woman that would make herself the assailant under the bill. And I...that will help get me to the question of engaged. And in fact, I think it was with...in the horrific story of somebody saying, look, I want you to strike me with a baseball bat, I notice in the tone, I think you would say that this should apply to her. And are there other things that we could explore that we would know whether or not she would be guilty of this act? I'll...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: Thank you. Implied consent seems to apply for consent here. There is a place where the woman would not be harmed, but the child would be, that should...I think was the basis of the third hypothetical, although I'm not sure that that's...that it's not an assault. It may well be an assault, to give somebody a drug without their knowledge that would harm...that they don't want to have happen, that they don't want to ingest. I'm not sure that there has to be harm to be an assault. I think it is an unwanted approach. I think that's what an assault is, an unwanted or unconsented to contact. That, I think, is the description of assault, which is why I'm not sure that the hypothetical...

SENATOR CUDABACK: Time, Senator Landis.

SENATOR LANDIS: ...that gave us in the third fits our needs. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. Before we go on with discussion on the motion to reconsider, the muffins that were passed out, in celebration of Senator Jensen's birthday, so let's congratulate Senator Jensen on his birthday, and wish him many more. On with discussion on the motion to reconsider.



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Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, is it Senator Janssen or Senator Jensen's birthday?

SENATOR CUDABACK: Senator Jensen. I'm sorry if I said Janssen.

SENATOR CHAMBERS: I ought to punish him by singing that song, but I'm not going to. (Laughter) When I saw those muffins coming around, I didn't have my reading glasses on, so my vision, the acuity is not what it ought to be, and I thought of this story that I heard so long ago that I forget the details. But the czar was a mean, mean machine. He was coming through his favorite bakery, and all of the bakers in their starched, white uniforms covered by starched, white, immaculate aprons that stretched just about to the floor, except two inches above the ankle bone, and one of those tall hats that fluffed on top like chefs wear, and they were standing there very proudly in front of their muffins. And one hunched the other one, said, I think you're going to be in trouble. And the fellow said, why? He said, because your muffin has a dead fly on it. And the czar was two bakers down, so there was not enough time to sweep it off. So the czar came and stood before this man, he looked, he said, what is that on your muffin? The guy grabbed it, he said, it's a raisin, and ate it. (Laughter) Well, when I saw all of those studs on top of that muffin, I thought they were flies, and as I told the young people who were so graciously handing them out, flies are a source of protein, but I will not eat a fly, knowingly. I was in a restaurant and a lady saw me, because when you sit by the window, the glass gets warm and that's where flies will gravitate, or they like the light. I would take a napkin and I'd grab the fly in the napkin. What a lot of people don't realize is that flies take off backward, so if you want to catch a fly, reach slightly behind, you'll get him every time. But if you want to really be an expert and you're fast, you can do like I do. When a fly is buzzing around, you can catch him by the middle leg on the right side. (Laughter) But this woman asked me, why do you keep bothering those little flies? I said, I don't like them on my food. She said, well, they don't eat much. I said, it's not how much they eat, it's just that they don't wash their feet and hands. And

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you all know I'm sensitive about that, and I think we all ought to, especially during flu season, because that is one of the quickest ways that the flu virus is spread. So soap and water, which are plentiful, can be preventatives, and I think people ought to resort to them. How does that apply to this bill? I see it as a viral infection of our statute, should it become law. Prevention is better than cure. I would like to stop it from getting there in the first place, so I'm going to do all that I possibly can. Senator Foley realizes that it's futile to argue against what I'm doing, just like it's futile for me to argue with him, because each of us has his respective position, and it's not going to change. So I have to burn time off the clock and that is what I'm doing. I want people to know. Since I'm throwing away this time to speak, I want to mention that there was an article that appeared in Saturday's Journal, and here's a comment with which I take great umbrage...to which I take umbrage. "Are we going to place value on a human life prior to birth?" Foley responded a moment later,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ..."Senator Chambers says, 'No, trash it.'" And by the reporter carelessly, and perhaps viciously, not printing the fact that I spoke strongly against what Senator Foley said I said, pointed out that I did not utter those words, I am going to read with more care what these reporters write. What I intend to do is get the transcript, send that article...this article and the transcript to this reporter named Nate Jenkins, to the editor, and let that editor make a determination about whether this is ethical journalism. Don't put words in my mouth. Foley said I said something. I responded to it. If you're going to print one side, print the other side, too.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: If you don't, I'm going to bring it up on the floor. It's openly and notoriously printed, and I'm not going to take this mess...

SENATOR CUDABACK: Time, Senator Chambers.

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SENATOR CHAMBERS: ...sitting down. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. Senator Landis, I want to pick up on our discussion earlier. As you know, on page 3 of the bill, at the top of the page, we've got the language that excludes the mother from prosecution under this new criminal statute that I'm proposing. To...I...Senator Landis, there is no instance, none that I know of or can think of, that would allow a prosecutor to go after the mother of the child. The mother is specifically excluded from any act--and the language says that--any act or conduct. So the mother is exempt from any prosecution in these cases. Now you raise a very important public policy question, which Senator Beutler also wants to get to, I think maybe on Select File, and that is, what do you do when you've got a woman who's pregnant, and she is deliberately and knowingly taking drugs and alcohol and so forth, with knowledge that it will damage her child? What do you do in those cases? That's a difficult public policy question. I have never proposed a criminal solution to that public policy question. So there is no conduct or act that a mother could engage in that would subject her to criminal prosecution under what I'm proposing. Now you also raised the issue of, could not a person be criminally prosecuted for maliciously forcing a woman to ingest a pharmaceutical that she does not want to ingest? And I would think that there would have to be some damage to the woman before you could prosecute someone for doing that. I'm not saying it's right, but I think you'd have to show damage to the woman before you could prosecute someone for that act. Now maybe I'm wrong, maybe there's something in the law that I'm not aware of, but that would be my take on that question. I think I'll just leave it at that, Senator Landis. You can pick it up on your own time, if you care to. Thank you.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Chambers, and this will be your third time, as you know.

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SENATOR CHAMBERS: Thank you. Mr. President, Oscar Wilde said a poet can stand anything except to be misquoted. I'm going to read the comment, if I can locate it, beside...next to what this reporter wrote. This appeared in the Journal Star, January 14, 2006, on page 1B, and it continued on page 2B, and it's on 2B that the offending words occur. Quote,...and this is in quotation marks: "Are we going to place value on a human life prior to birth?" Foley responded a moment later, "Senator Chambers says, 'No, trash it.'" This is the comment I wrote in the margin: This is an example of the kind of slapdash "reporting" that I railed against during debate on LB 57. The reporter created the impression that Senator Foley quoted me, and the failure of the reporter to print my repudiation and condemnation of Senator Foley's misrepresentation created the additional impression that my lack of response confirms the "truth" of Senator Foley's words. The reporter should keep his personal predilections out of his "reporting." What he did is inexcusable. Reporters are people with a job. They get paid for what they do, and like every other craft, trade, there are those who take seriously what they're about, and there are those who do not. This person did not, and I'm not going to let it go. Whenever somebody wrongs me, I'm going to respond. If it's the Governor, if it's the Attorney General, if it's the judge, if it's the Speaker, or anybody else, I don't owe it to anybody to let a person misrepresent me, especially when he knows better. I often talk about my advanced age, and how everybody is younger than I am. But that doesn't mean everybody is an adolescent, a juvenile, a toddler, or an infant. There are people who can be way up in age and nevertheless, be younger than I am. So I'm not talking about a tyro here, I'm talking about a man who's been grown for a long, long, long, long time, and he knows better. And if he didn't before, he's going to know it now. He will be the topic of what I say on the floor of the Legislature, as will anybody else. I have another rascal that I'm going to talk about this morning, and his name is Stenberg, a former senator for "Norfork," as he used to call it, "Norfork." Used to call him "Stinkberg," not trying to be funny. That's just the way he mispronounced the man's name. But sometimes what are called Freudian slips reflect the truth...

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SENATOR CUDABACK:    One minute.

SENATOR CHAMBERS:    ...more accurately than consciously stated words.    My reconsideration motion deals with a proposed amendment I offered, which was defeated.    My amendment was designed to bring truth and accuracy to what we're doing.    It would replace with the word "fetus" the term "unborn child" wherever it appeared.    And regardless of what happens with this motion, that is a subject I'm going to discuss again, and when I get to it, I want Michael to be prepared.    He told us what it meant when his mother used the formal Michael, rather than Mike.    But he should remember, Michael also was the name of an archangel.    So maybe "angelic doctor" is appropriate for Michael Foley this morning.    Thank you, Mr. President.

SENATOR CUDABACK:    Thank you, Senator Chambers.    (Visitors introduced.)    Senator Foley.

SENATOR FOLEY:    Thank you, Mr. President.    Last time I spoke I neglected to address another topic that I had intended to address, and that was this hypothetical, and it's my hypothetical, not Senator Landis', of the case where the girl...the young woman tells her boyfriend, go ahead, hit me with a baseball bat, and when she does that, she knows that being struck with a baseball is going to damage her child.    Wouldn't we at least prosecute her in that case?    And the answer is no, we would not.    We'd prosecute the young man for hitting her with the ball bat, for sure, and I don't think any of us would want to exempt that kind of conduct on his part.    So I'm certainly not going to offer language to excuse him from that kind of conduct.    But again, any act or conduct by the mother herself is excused.    There are some difficult public policy issues there, and we need to address those, perhaps, someday, but this bill is only intended to address third-party attacks against the pregnant woman.    That was always the intent of the legislation, and that's where I intend to keep the focus of our discussion.    Senator Chambers doesn't like the use of the term "unborn child."    Well, my goodness, the United States Supreme Court has used that term, in Roe v. Wade, and in every subsequent decision related to the abortion question, they always use the term "unborn child" to refer to the child

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in utero at every stage of development. From the moment of fertilization forward, "unborn child" is the correct legal term. And that's the term we ought to use in our statutes. That's the term we do use in our statutes in other areas of the law. The United States Congress has enacted legislation which uses the term "unborn child." Dozens of states have enacted statutes which use the term "unborn child." They do it because it's the correct term. Senator Chambers is simply incorrect to suggest that we should ditch that term and substitute a term of his choosing. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. On with discussion. Senator Stuthman, on the motion to reconsider.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I want to engage in a little bit discussion with Senator Foley, if he would respond, please.

SENATOR CUDABACK: Senator Foley, would you respond to a question of Senator Stuthman?

SENATOR FOLEY: Yes, I will.

SENATOR STUTHMAN: Thank you, Senator Foley. Senator Foley, your real concern is the attack on this unborn child; is that correct?

SENATOR FOLEY: Yes, it is, but it also gives some additional benefit to the pregnant woman, because of the location of the child. It gives her some added protection. And it's interesting, studies have shown that the rate of violence against pregnant women, unbelievable as it is, as it would sound, that rate of violence is higher against pregnant women than it is against women who are not pregnant. So the pregnant woman also, I think, enjoys some additional protection with passage of this statute. But the intent, as you stated it, is to provide additional legal protection for the unborn child, yes.

SENATOR STUTHMAN: Okay, thank you, Senator Foley. You're here in the legislative body right now. What were you before you

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became a senator?

SENATOR FOLEY: Prior to being sworn in as state senator, I used to work for Nebraska Public Power District.

SENATOR STUTHMAN: Okay, you was employed by an individual in a company?

SENATOR FOLEY: Yes, that's correct.

SENATOR STUTHMAN: What was you before you were employed by a company? Did you attend school?

SENATOR FOLEY: Well, yes. I've worked for other employers, as well, over the years, and prior to being employed in the market, I was a student at a couple different two or three colleges, and grade school, high school. I don't know where you want to go here.

SENATOR STUTHMAN: So in other words, you know, before you were employed by someone, you possibly was a student in school?

SENATOR FOLEY: Yes.

SENATOR STUTHMAN: And before you was a student in school, you was probably home with your mother in the family environment, right?

SENATOR FOLEY: That's correct.

SENATOR STUTHMAN: Okay, before you were in your family environment at home with your mother and your father, what was you before that?

SENATOR FOLEY: I was in utero, and very much alive.

SENATOR STUTHMAN: You were an unborn child?

SENATOR FOLEY: Yes, I was.

SENATOR STUTHMAN: So in other words, before you took a breath



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of life, you were a being that was an unborn child?

SENATOR FOLEY: That's right, and that gets right to the heart of what is discussed in every embryology textbook that's used, not only at the University of Nebraska, but other textbooks used across the country, that there has to be a beginning for each of us. And that beginning is the moment of fertilization, when the male sperm unites with the female ovum, or egg, to perform...to form a single cell, 46 chromosomes. That is the beginning of a new human life.

SENATOR STUTHMAN: Okay, thank you, Senator Foley. And I'll return the balance of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Stuthman. Further discussion? There are no lights on. Senator Chambers, the Chair recognizes you to close on your motion to reconsider the vote taken on FA199.

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. I think that what Senator Foley did was to put his foot in it, but in order that I'm clear on what he responded to Senator Stuthman, I'm going to ask him a question or two. Senator Foley,...

SENATOR CUDABACK: Senator Foley.

SENATOR CHAMBERS: ...at what time in your stage of development were you an unborn child, the earliest stage?

SENATOR FOLEY: I came into being when my father's sperm united with my mother's ovum to perform...to form a single cell.

SENATOR CHAMBERS: Okay.

SENATOR FOLEY: At that point, I began.

SENATOR CHAMBERS: Were you a full-fledged human being then?

SENATOR FOLEY: Yes.



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SENATOR CHAMBERS: Complete human being?

SENATOR FOLEY: Not fully developed. That's when the development began.

SENATOR CHAMBERS: Well, I know the...the beginning was with the egg.

SENATOR FOLEY: Well, we're making progress, I think, Senator Chambers.

SENATOR CHAMBERS: The beginning was with the egg and the sperm. That's where it began.

SENATOR FOLEY: Well, those were elements. Those were elements, but neither the sperm nor an egg will produce a human being.

SENATOR CHAMBERS: But they were the beginning, right?

SENATOR FOLEY: Well, they were elements of the beginning, but they were not the beginning.

SENATOR CHAMBERS: So then nothing which preceded the creation of the zygote by the sperm fertilizing the egg is not a part of the beginning of a human being, is what you're saying?

SENATOR FOLEY: I didn't say they weren't a part. They were elements.

SENATOR CHAMBERS: They are not...

SENATOR FOLEY: They were joined together.

SENATOR CHAMBERS: They are not the beginning of a human being?

SENATOR FOLEY: The beginning of a human being is when those two cells that I mentioned earlier join together to form a single cell.

SENATOR CHAMBERS: Now that was an arbitrary determination, wasn't it?

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SENATOR FOLEY:    Well, it's...that's what you'll read in any embrology textbook, Senator, in any university or any medical school.

SENATOR CHAMBERS:    So then you accept whatever we find in a...

SENATOR FOLEY:    I think it's good science.

SENATOR CHAMBERS:    You accept whatever is found in an embryology textbook in any university in the country; is that what you say? Or you accept...

SENATOR FOLEY:    I never said that I...

SENATOR CHAMBERS:    certain things?    You accept certain things from the...

SENATOR FOLEY:    I have never...Senator, I have never attended medical school, but I have available to me excerpts of the material from embryology textbooks that are used in medical schools.

SENATOR CHAMBERS:    And those excerpts...

SENATOR FOLEY:    And on this key point, which is the point that's under contention, I've researched the question, and the textbooks are very clear.

SENATOR CHAMBERS:    Okay, don't take all my time, although we'll have plenty, but I want to stay on this while it's fresh on...in your mind.    Since you feel that you were a full-fledged human being at the point of conception, did that mean you were a person? Were you a full-fledged person at that point?

SENATOR FOLEY:    Yes.

SENATOR CHAMBERS:    Would you turn to page 3 of the green copy of your bill?

SENATOR FOLEY:    I'm there.

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SENATOR CHAMBERS: You've got it?

SENATOR FOLEY: Yes.

SENATOR CHAMBERS: Now beginning in line 9 it says, any person who while operating a motor vehicle in violation of certain sections proximately causes serious bodily injury to another person or an unborn child...that "or" is disjunctive. It means you have two different elements here, two different entities. If an unborn child is a person, why do you say, injury to another person or an unborn child? That would suggest to me that an unborn child is something other than a person; is that true?

SENATOR FOLEY: Well, because under today's law a prosecutor could not successfully prosecute the drunk driver for serious bodily injury to an unborn child, he could not,...

SENATOR CHAMBERS: Then let me ask you a question.

SENATOR FOLEY: ...because of the way the courts interpret statute.

SENATOR CHAMBERS: The laws say what the Legislature puts into them; isn't that true?

SENATOR FOLEY: I'm sorry, say that again, Senator?

SENATOR CHAMBERS: The law consists of what...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the Legislature creates through legislation...

SENATOR FOLEY: Yes.

SENATOR CHAMBERS: ...and puts into the statute books.

SENATOR FOLEY: Yes.

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SENATOR CHAMBERS: "Unborn child" is in the statute books because the Legislature put that term there; is that true?

SENATOR FOLEY: That's true.

SENATOR CHAMBERS: Instead of you and I going through this argument every time you bring one of these kind of bills, why don't you say "person?" You've defined "unborn child" in other places already in the law, haven't you?

SENATOR FOLEY: Yes, we have.

SENATOR CHAMBERS: So why don't you say, an unborn child is a person? Why don't you just do that? That hadn't occurred to you, had it? Be honest, Michael.

SENATOR FOLEY: (Laugh)

SENATOR CHAMBERS: Not you, Michael Flood. There are other Michaels in this world, other than thou. Michael Foley, you hadn't thought of that, had you?

SENATOR FOLEY: No, I wouldn't say I hadn't thought of that. No, I wouldn't say that at all.

SENATOR CHAMBERS: It hadn't occurred to you to attempt it, had it?

SENATOR FOLEY: I...

SENATOR CHAMBERS: Be honest.

SENATOR FOLEY: I thought about it.

SENATOR CHAMBERS: There's one greater than I watching you.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR FOLEY: I...saved by the bell.

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January 17, 2006    LB 57, 1112-1137

SENATOR CHAMBERS:    I'd like a call of the house.

SENATOR CUDABACK:    There's been a request for a call of the house. You've heard the close on the motion to reconsider. All in favor of the house going under call vote aye; those opposed, nay. Record please, Mr. Clerk.

CLERK:    21 ayes, 1 nay, Mr. President, to place the house under call.

SENATOR CUDABACK:    The motion was successful.    The house is under call.    All unexcused senators please report to the Chamber.    The house is under call.    Unauthorized personnel, please leave the floor.    The house is under call.    Unexcused senators please report to the Chamber.    The house is under call.    Senator Dwite Pedersen.    Senator Jensen, would you check in, please.    Thank you.    Senator Price, would you also check in.    Thank you.    Senator Loudon, would you check in, please.    Thank you.    Senator Cunningham.    Senator Byars.    Senator Cornett, would you check in, please.    Thank you.    All members please check in.    Senator McDonald.    Senator Preister.    All members are present or accounted for.    The question before the body is the motion to reconsider the vote taken on FA199 to LB 57.

SENATOR CHAMBERS:    Roll call vote.

SENATOR CUDABACK:    There's been a request for a roll call vote on the question.    Mr. Clerk, when you get time, please call the roll.

CLERK:    (Roll call vote taken, Legislative Journal pages 343-344.)    4 ayes, 26 nays, Mr. President, on the motion to reconsider.

SENATOR CUDABACK:    The motion was not successful, and I do raise the call.    Mr. Clerk, items for the record, please.

CLERK:    Mr. President, new bills.    (Read LB 1112-1137 by title for the first time.)    Mr. President, new hearing notices from the Agriculture Committee, and from the Transportation and Telecommunications Committee, and from Urban Affairs.    And I

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January 17, 2006     LB 57, 120

have an amendment from Senator Schrock to be printed, Mr. President, to LB 120. (Legislative Journal pages 344-350.)

Mr. President, the next amendment to LB 57, Senator Chambers, FA200. (Legislative Journal page 1313, First Session, 2005.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA200 to LB 57. Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Mr. Clerk. Members of the Legislature, if you will look on your gadget you will see what this amendment is and where it goes into the bill, but I'm going to read it. Then if you have any interest in seeing it with your own orbs, then just check it out on the gadget, on page 2, after line 10. This actually could be placed anywhere it could be made into a separate section, but what I decided to do, since so much discussion swirls around bodily injury, I would provide a definition that is found in the statute, 28-109(20), where definitions are given. Why would I do it if there's already a definition? Senator Foley pointed out that the term "unborn child" is defined elsewhere in statute. Sometimes it is helpful, when a statute is being considered, to know the definition of words that relate to the element of an offense, if it happens to be a criminal statute. Serious bodily injury is the crux of one of the grades of this offense, which is assault on a fetus. This is the language I would insert: For purposes of this act, serious bodily injury means bodily injury which involves a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body. This definition tells what serious bodily injury means in criminal statutes in the state of Nebraska. Senator Foley may oppose this amendment, and if he does, he will tell us why. But whether this definition appears in this piece of legislation, proposed legislation, or simply remains in the definitional section in the criminal code, its meaning is not going to alter. The hang-up for Senator Foley will be the word "body" at the end of the sentence, and three words to the left of it, "organ," o-r-g-a-n. Senator Foley may believe that he was a full-fledged human being as a zygote, but he doesn't find that in any book on embryology, unless he wrote it or one of the angelic doctors of

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the Catholic Church wrote it, nor will he find it in any legitimate scientific publication. Senator Smith, whose significant other makes some of the best pies I have ever eaten--try one of Mrs. Smith's pies and you will never go to Maria (sic) Callenger (sic), or "Colander" or Callender, whose pies are loaded with saturated fat, probably trans-fat. But Mrs. Smith, mm-mm-mm-mm-good. But Senator Smith is not quite up to her level of competency when he decides to send something around to us with a comment. An article relating to the investigation by an academic panel, and some other scientists, of some faked, forged, fraudulent--whatever term you want to use to let it be clear that the item being discussed is not legit--so-called research done in South Korea, where a man claimed that he had conducted successfully certain types of cloning. Senator Smith handed this around and wrote, in his inimitable hand: Colleagues, I thought you might find this useful. And Senator Johnson did find it useful, useful to make a very cogent point. Senator Johnson wrote and handed around to us the following: A perfect example of scientists challenging other scientific claims--were it only so with dogma. That is crucial. Scientists who come up with what they think is a new discovery, publish it over after--unless they're frauds like this guy in South Korea--after they have tested it, discussed it with others, even sometimes let others see whether or not they could replicate whatever it is, if it was a process that supposedly produced a specific result. When the publication occurs, other scientists read it very critically. It may have been written with a telescope, but it's examined with a microscope; in fact, an electron microacope, which is really a camera, strictly speaking, and it uses streams of atoms rather than light to magnify. But at any rate, there is a rigid process by which scientific findings, theories, conclusions are tested. The same is not so when it comes to religion. Religious people know that they're talking cock-and-bull nonsense, but they cover it over and they threaten anybody who would challenge it. In the old days, when the church...and not just the Catholic Church. There was a guy in Switzerland who burned a man at the stake, and he was what is called a Protestant. The man who was burned--I'm not going to tell you his name; you can check it out or come to me later. But the Catholic Church was the one, by and large, that did the burning.

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When the "Chrishians" came to this country, others than Catholics did some terrible things to people because they questioned supposed religious truths. What we have in a bill before us today is something that will not withstand scientific or even legal analysis. Senator Foley wants to put into the statute a conclusion not even shared in by all religions, but it is a religious point of view, and the same nonsensical foolishness that is found in all religions he is asking you to incorporate into the statutes. And the others of you, blinded, brain dead, and accepting something as indisputable because your church said it--and your church has changed its mind on things--will go along with this. Something that Catholics would probably fight and die over, or kill over, some of them, the Assumption, which meant Mary went up into heaven without dying, do you all know they didn't come to that conclusion until after I was born, and I was in high school? These things are of recent vintage.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Catholics don't know. They don't know when these things came up, but once they're told, this is it, that's it. And I say, if you want to believe that, join the church where they teach it, and I wish you well, but when you bring that stuff into the Legislature, I call it what it is--mess. It becomes mess when you bring it to the Legislature. When an animal takes a delicious-appearing red apple, masticates it, mixes it with saliva, washes it on down into one stomach, or passes it back and forth among several stomachs, every part of that process changes the nature of that apple. There is an entryway, and there is an exit, and that which exits is not the same as what entered. And when something is exiting, it has its characteristic appearance and odor.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA200 offered by Senator Chambers to LB57. Open for discussion on that amendment. Senator Foley, followed by



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Senator Chambers.    Senator Foley.    Is Senator Foley on the floor?    Senator Foley, you're recognized to speak, if you care to.    Yes.

SENATOR FOLEY:    Thank you, Mr. President.    Well, here we go again, Senator Chambers.    He continues to offer the view that the definition of when a human being comes into existence is somehow a Catholic theology that was invented somewhere along the way and that I'm asking all of you to swallow a Catholic dogma.    Well, to the extent that the Catholic Church teaches that a human being came to existence at the moment of fertilization is simply good science.    That's what the scientists will tell you if you ask them, when did the human being begin?    And I read extensive excerpts from the textbook used at the University of Nebraska, and I know Senator Chambers goes up the wall every time I mention that textbook.    He wishes that textbook were burned, I suppose.    But it's there and it's used, not only at our university, but at medical schools across the country.    If he doesn't like that textbook, let's try another one.    And again, this is another textbook not produced by the Catholic Church.    This is one of the premier textbooks on medical embryology--that's the title of the book, Medical Embryology, Third Edition, published by Williams and Wilkins, author Jan Langman, L-a-n-g-m-a-n.    And I quote: The development of a human being begins with fertilization, a process by which two highly specialized cells--the spermatozoon from the male and the oocyte from the female--unite to give rise to a new organism, the zygote.    That's what you're going to find in any medical embryology textbook.    Show me the book that doesn't have that definition.    You can't dismiss that as just some Catholic dogma that somebody invented in the Dark Ages.    That's science.    As to FA200 that Senator Chambers has offered, there's no need for FA200.    The definition of serious bodily injury is in state statute.    It's been there for decades.    Senator Chambers knows that.    It's been there for decades.    There's absolutely no reason to repeat a definition of serious bodily injury in this new criminal provision.    I think he's doing it with malicious intent to the bill.    (Laugh)    That's a pretty good guess.    I figured it out.    (Laugh)    And I think he's just acknowledged that is his intent, and I'll ask you to vote no on FA200.    Thank you.

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SENATOR CUDABACK:        Thank you, Senator Foley.    On with discussion.    Senator Chambers.

SENATOR CHAMBERS:    Mr. President, members of the Legislature, Senator Foley is so funny. How can I be acting with malicious intent when I want to define a word that he has in his bill, and I'm using the definition in the statute? Would it be a malicious act against his bill to put the definition of serious bodily injury into the bill? That definition is not created by me. I'd like to ask Senator Foley a question before I deal with what he said earlier.

SENATOR CUDABACK:    Senator Foley, would you yield?

SENATOR FOLEY:    Yes, I'd be delighted.

SENATOR CHAMBERS:    Senator Foley, if I understood you correctly, and I stand to be corrected here and now if I didn't, I thought you said that the definition of "unborn child" in this bill is the same definition found in another statute. Did you say that?

SENATOR FOLEY:    The definition in this bill is identical to the definition in statute, per passage of the Homicide of the Unborn Child Act four years ago.

SENATOR CHAMBERS:    Well, let me ask you this.    If you say there's no need in repeating a definition that's already somewhere else in the statute, why are you repeating this definition, when it's somewhere else in the statute?

SENATOR FOLEY:    Very good question, Senator Chambers, very good question. And just...it's there to ensure clarity of the law. This is a criminal statute, and absolutely essential...

SENATOR CHAMBERS:    Okay, it's on my time.    What is the difference between your repeating a definition which is somewhere else, and my repeating a definition somewhere else?

SENATOR FOLEY:    Senator Chambers, you represent to this body that FA200 is word-for-word identical with the definition of

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serious bodily injury that is found in the criminal section of our statutes?

SENATOR CHAMBERS:    Yes, I stated that.    That's why there shouldn't be any problem with it, if somebody...

SENATOR FOLEY:    And you're wrong.

SENATOR CHAMBERS:    ...reads this and it happens to become law, then they'll have the definition there.    But that's all...

SENATOR FOLEY:    No, you're wrong.

SENATOR CHAMBERS:    ...I will ask you on my time, Senator Foley, because you can take your time, but I won't give you all of mine.    Mr. President, Senator Foley correctly reads words, then he immediately departs from them.    He reads what I have said: the beginning of the development of a human being.    Those are the words he said: the beginning of the development.    It didn't say that a zygote is a human being.    It is the beginning of the development, two stages back from what he's talking about.    He cannot show you a textbook which says a zygote or even a fetus is a human being.    It's a stage in the development.    I have always said you have potential life, you have a potential human being, but you don't have a completed human being.    If you're talking about development, it is an ongoing process.    Young people know this.    Senator Foley can't get it through his head, because he's speaking as a Catholic and not as a thinker.    He wants to put a Catholic spin on it.    I don't care how many textbooks he will get, which are accurate; he'll get the same thing--the beginning of the development, not a human being.    And that's why they would like to burn these textbooks and rewrite them, saying something closer to their heart's desire.    They can preach it in their churches, they can teach it in their schools, and it makes me no difference.    But it makes me a lot of difference when they want to put it in the statute books.    This is not a scientific principle.    This is a religious conclusion, and it has not always been the conclusion of the Catholic Church.    The Catholic Church did not always believe that at conception you had a full-fledged human being.    The church taught that a male fetus...

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...received or was infused with a soul at an earlier point than a female fetus, which meant there was a point between conception and the infusion of a soul when neither one of them was human. That's what the church's position was. Now he's coming up here in 2005, and it's my job, as long as I'm in the Legislature, to thwart this kind of nonsense. It is as nonsensical as the arguments made against evolution. It is as nonsensical as the Angelic Doctor, Thomas Aquinas' conclusion that life spontaneously generated in decaying matter.

SENATOR CUDABACK: Time, Senator Chambers. You may continue, your light is next.

SENATOR CHAMBERS: Thank you, and is this my third time, Mr. President?

SENATOR CUDABACK: It is.

SENATOR CHAMBERS: Okay, thank you. The law is different from a prayer book. The law is different from a church hymnal. The law is different from the "Holly Bible." All of those things are fanciful, they are full of superstition, magic, errors of every type and variety. The nature of religion is to be erroneous. The job of religion is to contrive errors and force them on other people. In this country there was an old gentleman in Salem, and the "Chrishians" were running rampant. In their silliness they believed that some woman or women, or women and men working in concert with the evil one--not George Bush, although that applies to him, but he wasn't around at that time--to possess with demons some of these young girls who were manifesting very bizarre behavior. So they proclaimed some people to be witches, and these people, so proclaimed, would not say that they were witches. And for Senator Foley's information, there was a point in the church's history when if you believed in witches, that was heresy. If you believed in witches, that was heresy. Then they came along later and said, if you don't believe in witches, that's heresy. And he could...if he reads Catholic encyclopedias and publications like

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I do, he'd know these things, but he's not interested. He's an automaton, he's a robot, he's a recorder that they feed it in, and then he spits it out. But this old gentleman was going to be subjected to one of the "Chrishians'" favorite means of death, because it was prolonged and it was agonizing. They'd lay a person on his or her back, spread-eagle, and begin to pile heavy rocks on that person. And after a while, it became difficult to breathe, bones could not support the weight, bones would snap, the weight would crush the person, and the will of God was done, and that gentle Jeaus, who spent all that time saying, love one another, was cheering in heeven, because those who claimed to be his children had brutally, viciously, cruelly, barbarically, murdered one of his children, and the "Chrishians" felt holy. So this old gentleman was under the stones, and they were trying to make him recant or confess. So after they had all these stones on him, he couldn't get enough breath, but his lips were moving. So somebody put their ear to see if he was going to ask for mercy, and you know what the man was saying? More weight. In other words, do your worst, "Chrishians." And that's what I invite Senator Foley and his ilk to try to do on this floor, and I'm going to do everything I can to stop them. But there's no reason why this amendment that I'm offering should not be adopted. Thank you, Mr. President.

SENATOR CUDABACK:    Thank you, Senator Chambers.    Further discussion?    Senator Foley.

SENATOR FOLEY:    Thank you, Mr. President.    Senator Chambers, would you yield to questions, please?

SENATOR CUDABACK:    Senator Chambers?

SENATOR CHAMBERS:    Although you should yield not to temptation, Oscar Wilde said the way to make it go away is to yield to it, so yes, I yield.

SENATOR FOLEY:    Senator Chambers, I asked you on the record a moment ago, and I want to make sure the record is absolutely as clear as can be, do you represent to the body that the language of FA200 is a word-for-word identical definition to the definition already found in the criminal code of Nebraska,

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regarding serious bodily injury?

SENATOR CHAMBERS: Well, let me say this: It's my belief that it is, and it was my intent to make it so, but if I made an error...

SENATOR FOLEY: Senator Chambers, could you pull...

SENATOR CHAMBERS: ...I stand corrected.

SENATOR FOLEY: ...could you do me the favor of pulling up on your screen the precise language of your amendment?

SENATOR CHAMBERS: I've got it here.

SENATOR FOLEY: All right. Let me read from Section 28-109 of Nebraska Revised Code, the criminal code of Nebraska. Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement or a protracted loss or impairment of the function of any part or organ of the body. Senator Chambers, assuming that I've read that correctly, does the language that I've read comport with the language that you've offered in FA200?

SENATOR CHAMBERS: Yes, it comports with it, but it is not word-for-word the same.

SENATOR FOLEY: It's not identical.

SENATOR CHAMBERS: But it definitely comports with it.

SENATOR FOLEY: It's not identical, then.

SENATOR CHAMBERS: No, the two are not identical.

SENATOR FOLEY: Thank you, Senator Chambers. The adoption of Senator Chambers' amendment would wreak havoc with our statutes, and that's, of course, his intent. He fears the bill will pass, he fears the bill will become enacted into statute, and he wants to disrupt the criminal statute so that the law can't be

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applied. Now that's my assumption. If this is an honest mistake, I'll accept that and retract what I just said. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Further discussion on FA200? Seeing no lights on, Senator Chambers, we'll recognize you to close.

SENATOR CHAMBERS: Thank you, Mr. President. What I'm offering here is not a mistake, and it is not designed to wreak havoc with the statutes. I'd like to ask Senator Foley a question.

SENATOR CUDABACK: Senator Foley, would you yield?

SENATOR FOLEY: Yes, I will.

SENATOR CHAMBERS: Senator Foley, one of the words in what you read was "death," is that true?

SENATOR FOLEY: Yes.

SENATOR CHAMBERS: This bill does not deal with death of a fetus, does it?

SENATOR FOLEY: It speaks of risk of death.

SENATOR CHAMBERS: This bill does not deal with death, does it?

SENATOR FOLEY: This is a criminal...no, what I'm offering is a criminal assault statute.

SENATOR CHAMBERS: Okay. Now, is there such a thing as attempted murder?

SENATOR FOLEY: There is.

SENATOR CHAMBERS: That wouldn't be in this statute, because it does not touch on the elements that constitute attempted murder; is that correct?

SENATOR FOLEY: But we already have language regarding serious

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bodily injury,...

SENATOR CHAMBERS:    Are we...

SENATOR FOLEY:       ...as it relates to the criminal assault statutes.

SENATOR CHAMBERS:    Senator Foley,...

SENATOR FOLEY:       Now you're creating a brand-new definition that's different...

SENATOR CHAMBERS:    Senator Foley, you're trying to run off...

SENATOR FOLEY:       ...from what's already in the criminal assault statute.

SENATOR CHAMBERS:    You're trying to run off with my time.    This statute in no way implicates attempted murder, does it?

SENATOR FOLEY:       It may result...

SENATOR CHAMBERS:    No, no.

SENATOR FOLEY:       ...from an attempted murder, yes.

SENATOR CHAMBERS:    Thank you, Senator Foley.    Members of the Legislature, do you all see how difficult it is for Senator Foley to answer a question? He asked me a question, I answered it categorically. He is always feeling that any answer, it makes him vulnerable, because he knows he's dealing with nonsense. This definition would in no way hurt this bill. It is tailored to fit what the bill is talking about--only assault. What is done here is not attempted murder. What Senator Foley may not understand, attempted murder is not an included offense of assault. Attempted murder is a greater or higher offense. So, you might have some actions which could be a lesser included offense of a higher degree of an offense, but you cannot take a lower offense and say, included in that is a higher. Attempted murder is not included in the assault statute. Attempted murder does not result in death. If it resulted in death, it would be



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murder.    We're not talking about murder, we're talking about serious bodily injury, and this definition fits what is being discussed in this bill, like a glove. But I know Senator Foley cannot agree to any amendment offered to this bill, especially by me. But one thing he can't get away from, no matter how he shuffles, no matter if he sidles around this Chamber like a crab moving sideways struck by lightning, the fact is that he does not believe what he said about a zygote being a full-fledged human being. He knows that a zygote is not a person. He has not offered a bill to simply say that an unborn child is a person. He has complicated, obfuscated, by coming up with this definition.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: "Unborn child" means an individual member of the species homo sapiens at any stage of development in utero. That definition is not here for "person," which would say, perhaps, a person means an individual member of the species homo sapiens not in utero. He doesn't say that. He knows that there's a distinction between a fetus and a person, and I'm going to make sure, to the extent that I can, that the separation that he's trying to bring about between a fetus and the pregnant woman does not obtain. When a woman is pregnant there is one being, there is one person. That person is the woman.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. I will ask for a call of the house.

SENATOR CUDABACK: The question before the body is, shall the house go under call? All in favor vote aye; opposed, nay. Shall the house go under call? Record please, Mr. Clerk.

CLERK: 17 ayes, 1 nay, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to

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the Chamber. The house is under call. All unexcused senators please report to the Chamber and check in. The house is under call. Senator Langemeier, would you check in, please. Senator Heidemann, Senator Schimek, Senator Landis, Senator Kruse, Senator Kremer, and Senator Connealy. Senator Landis. The house is under call. Senator Langemeier. Excuse me, you're here. Senator Connealy, the house is under call. All members are present or accounted for.

SENATOR CHAMBERS: Roll call vote.

SENATOR CUDABACK: There's been a roll call vote requested on the question, whether FA200, offered by Senator Chambers to LB 57, should be adopted. Mr. Clerk, call the roll, please.

CLERK: (Roll call vote taken, Legislative Journal pages 350-351.) 7 ayes, 19 nays, Mr. President, on the adoption of the amendment.

SENATOR CUDABACK: The motion was not successful. FA200 was not adopted, and I do raise the call. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to reconsider the vote just taken.

SENATOR CUDABACK: The motion is to reconsider the vote just taken. Senator Chambers, to open on that motion.

SENATOR CHAMBERS: Yes. Thank you, Mr. President. Members of the Legislature, this ought to just about take us to the feed trough, and that's what my intent is, just to stop it. The train is barreling down the track. The brakes have been burned out. This is a job for Superman, and I have to stop this train and save the senators and the Legislature from themselves and itself, respectively. People know that this definition would in no way hurt this bill. Senator Foley has put himself in a preposterous, untenable position, and he's drawing everybody in behind him. When you're reading a piece of fiction, such as A Tale of Two Cities by Charles Dickens, and a guy supposedly wrote and wrote and wrote by using bodily fluids and soot, or dust off the bricks on the interior of the prison to make a kind

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of ink, in order to go along with that, you engage in what they call in the literary world a voluntary suspension of disbelief. You are not going to hold this story, this presentation, to principles that obtain in the real world. Sometimes the only way a story can be written is to put things in it which never could happen in this world. Fiction serves the purpose of bringing together ideas, concepts, principles, within the framework of a story, so that a point can be made, or no point other than entertainment and enjoyment. But the aim is to engage the mind, the emotions. The purpose of a textbook in embryology is not to engage the emotions. That's why they don't talk about "unborn child." That's why they don't say, Michael Foley was a full-fledged human being as a zygote, even though he erroneously thinks that. This definition that I offered fits what this bill purports to do. But the bill is not being read or analyzed by my colleagues. Since I have been critical of people not reading and analyzing bills, I'm going to have to read, analyze, and discuss bills on the floor, so that I do not articulate a principle which I myself do not intend to adhere to. Tomorrow I'm going to go into some discussion of Don Stenberg and the "Repelicans," to show how simpleminded they are. They sign all kind of pledges and agreements before they can run for office. One of the things that "Stinkberg" made these other two guys agree to, this Kramer and this Ricketts fellow, was that they would not engage in personal attacks, no negativity. Then, because they will not roll over like kids on the playground to a bully, he became very personal and disparaging. He referred to them as: my unknown, inexperienced opponents, who need these debates more than I do. He violated the first principle he already got them to accept. That's "Repelicanism" in action, but I'm going to discuss it in more detail tomorrow. I have enough to keep this bill before us until we adjourn and "Lieutenant Hungry" and "Captain Lunch-hunter" can link arms and go feed at some trough being provided for them, a junior Abramoff. My intent is not only to stop this bill, but to demonstrate my determination to hold on tenaciously to the principle that I will do all I can to defeat unwise, unreasonable, simpleminded legislation. This is simpleminded. They try to cloak it in this notion of respect for human life, respect for the woman. No, it is disrespecting the woman. They want to say that a pregnant woman is a mother.

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Why, then, is a pregnant woman referred to as a mother to be? They know that they're misusing words. A cow that has never given birth is a heifer. I'd like to ask Senator Connealy a question, since he's standing up anyway.

SENATOR CUDABACK: Senator Connealy.

SENATOR CHAMBERS: Senator Connealy, what is a cow called who has never given birth?

SENATOR CUDABACK: Senator Connealy.

SENATOR CONNEALY: A heifer.

SENATOR CHAMBERS: Thank you. A heifer. There are terms that carry a meaning. These people, acting under Catholic dogma and the fog of religious dogma, want us to blur these terms, intermingle them, so you can't make head or tail of anything except that what the Catholic Church wants the Catholic Church gets. But the Catholic Church does not get it by me rolling over like people do in Congress and legislatures all over this country. I'm going to do what I can to stop them, keep them in the church. There was a bishop in Mexico who created a furor, f-u-r-o-r, by acknowledging frankly that the church accepts, and always has accepted, large amounts of money from drug dealers. They knew it, the Catholics knew, but they didn't want it stated so publicly. The Catholic Church in this country has always accepted money from the mobsters. Whether you call it the Mob, the Mafia, La Cosa Nostra, the family, Gambino, "Legs" Diamond, Joe Valachi, all of them, they were welcome in church, and their money was welcomed. And you know what these rascals say in the church? Well, the money is transformed. When it passes the door and comes into the church, it's purified. Don't that beat all? Then the church is the greatest launderer of ill-gotten goods than any other operation on the face of the earth. So they launder drug money. They're very tolerant of abuse, sexual abuse of children. They don't want to get rid of pedophile priests. That's a criminal organization, and if it were anything other than the Roman Catholic Church, it would be called what it is and it would be shut down, and I wouldn't be fiddling around here with Senator Foley like I am today. And

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when they bring that in here under the auspices of the church, I'm going to talk about the organization that is behind it. But the so-called organized pro-life people know this is nonsense. They said Senator Foley's bill is not even on their radar screen. They don't even care about what he's talking about. But Senator Foley has you believing that this thing that he's bringing is on the minds of everybody like it's on his mind. His feverish little brain is overwrought. His emotions are...he is distraught, emotionally distraught. He has lost his balance, and he wants you all to unbalanced right along with him. It is...well, I won't quote what it actually says, but you all have heard the popularized version: misery loves company.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: But it is a comfort or a solace to the wretched to have companions in grief. That's the way it really goes; not "misery loves company." But a lot of things are popularized, and people think that the popularized version is what the real one is. How many of you have heard, music hath charm to soothe the savage beast? It's not "beast," it's "breast," b-r-e-a-s-t. The poet wrote, music hath charm to soothe the savage breast, talking about human beings, what's in them. Not the beasts of the field; they don't need it. They act in accord with their nature. Human beings are the ones who need that music. And the next time I speak, I'll go into that a little bit more, and tie it into this nonsensical bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the motion to reconsider FA200, the vote taken. Open for discussion. Senator Brown.

SENATOR BROWN: Mr. President, members of the Legislature, I am a person who has for years worked to protect women who are victims of domestic violence. And Senator Foley is unfortunately too correct that the leading cause of death in pregnant women is abuse. I'm a person who has for years worked to prevent child abuse, and yet I am very torn on this bill. On the fetal homicide legislation, I eventually voted for the bill, even with reservations about some of the language, because there

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was such a clear and demonstrable result of the action. In this bill, the result is less clear and obvious. The bill ignores the vagaries of pregnancy. A large percentage of pregnancies of unassaulted women result in birth defects. According to the March of Dimes, 1 in 28 births is a child born with birth defects, and we don't have any way of knowing whether there was some intervening action that resulted in these birth defects. I wanted to believe that the protection of mothers and children was the intent of this bill, and if I believed that the goal was to serve as a deterrent to the abuse of pregnant women, I would embrace it. But it seems to me, in some of the discussion that I've listened to, that the concern about the relationship of this bill to previous legislation establishing in statute the definition of an unborn child and according rights to an unborn child is more important than concern with the consistency with what we define as assault of any person. The definition of an unborn child at any stage of development, the unannounced yet intended consequence, I believe, of this bill, could be the criminalization of forms of birth control. Some forms of birth control interfere with the implantation of fertilized cells. And I will make the...I will use the term "cells" at this point. And so in that regard, if we are talking about an unborn child at any stage of development, the action of anyone in providing birth control to this woman would be...could be criminalized. And the language that we put in statute, and what it means for the activities that we may consider acceptable, normal activities, and what we may be doing to present an opportunity for somebody's actions to be criminalized, I think is very, very concerning. And so it is the unannounced but I believe intended consequences of the language of this bill that causes me reserve. As I have said before, if I believed that what we were doing was only to make it a deterrent to the abuse of pregnant women, I don't believe that anybody could possibly argue with it. Thank you.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Thank you, Senator Brown. Senator Foley, speaking to the motion, please.

SENATOR FOLEY: Thank you, Mr. Speaker, members. Let me address

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Senator Brown's concerns first, before moving back to the argument that Senator Chambers offered. Senator Brown, I think you're voicing thoughts that other senators may have, so it's important that you raise them and that I address them. I think some senators may be under the impression that one must prove serious bodily injury to the unborn child instantly at the time the child may still be in utero, or instantly at the time of birth. That's not the case. A period of time could lapse before all the elements of proof are assembled by a prosecutor. And yes, of course it's true, some children are born with serious birth defects. Of course that's true. It's unfortunate. And those birth defects may have absolutely nothing whatsoever to do with any kind of an attack on the child or the mother. Those birth defects may have been there anyway. And that's why prosecutors have the ability to exercise discretion as to which cases to take to trial. Same is true with fetal homicide. Miscarriage is a naturally occurring event. And we had people arguing four years ago that women were going to be hauled off into court proceedings because they had miscarriages. That hasn't happened, because the prosecutors have used the law properly, and they used the law the way that we said they would use the law, when they had evidence in a case beyond a reasonable doubt that they could bring to a jury and prove. And that's happened four times now since passage of the fetal homicide statute four years ago. Senator Chambers...obviously, Senator Chambers despises the bill. He's going to do everything he can to damage or kill the bill. He's been pretty up-front about that. And the FA200 that he offers does damage to the bill. When you write a criminal statute, every word counts, and if you're going to use a definition and rely on it in the construction of your criminal statute, you ought to rely on language that's been in statute before, has been tested in the courts before, and that it works. We have a definition of serious bodily injury. It's in the criminal code. We're using that same definition in the bill. Senator Chambers wants to change it, insert some new words, delete other words, saying, you don't really need those words; let's get rid of them. No, the words have been there for decades, the courts understand those words, we're going to use those words. That's the proper way to construct a criminal statute. That's the language that went through the Judiciary Committee, in more than



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one biennium, under more than one Chairman, with overwhelming support. Two years ago, this bill, in a slightly different form, came out of committee 7 to 0 with 1 senator absent, and most recently this bill came out 7 to 1 with, obviously, 1 dissenting vote. The language that I have presented to you is reasonable, it's properly crafted. I'm not going to tell you that I would never accept an amendment. But bring me something that's constructive to the bill. Don't bring me amendments that are destructive to the bill. And when you do, like FA200, I'm going to vote no and urge others to vote no. Senator Chambers is trying to do damage to this bill. He's very up-front about that, he's very open about that, and I'm going to oppose that. Thank you, Mr. President.

**SPEAKER BRASHEAR:** Thank you, Senator Foley. Mr. Clerk, items for the record.

**CLERK:** Mr. President, new bills. (Read LB 1138-1157 by title for the first time.) New resolutions: LR 272CA by Senator Connealy, proposes a constitutional amendment to Article VIII, Section 12; LR 273CA by Senator Brashear, proposes a constitutional amendment to Article II, Section 1; and LR 274CA by Senator Brashear, proposes an amendment to Article II, Section 1. Mr. President, notice of hearings from the Education Committee. Amendments to be printed: Senator Foley to LB 57; Senator Byars to LB 85A. Name adds: Senator Stuhr to LB 65; Senator Flood to LB 844; Senator Burling, LB 1044; Senator Aguilar, LB 1080; Senator Aguilar, LB 1088; Senator Dwite Pedersen, LB 1111. Senator Chambers would move to print an amendment to LB 542A, Mr. President. That's all that I had, Mr. President. (Legislative Journal pages 351-357.)

**SPEAKER BRASHEAR:** Thank you, Mr. Clerk. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do now sign the following legislative resolutions: LR 245, LR 246, LR 247, LR 248, LR 249, LR 255, LR 256, LR 257, LR 258, LR 260, and LR 261. Mr. Clerk.

**CLERK:** Mr. President, Senator Byars would move to adjourn until Wednesday morning, January 18, at 9:00 a.m.



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SPEAKER BRASHEAR: Thank you. You've heard the motion. Members, the motion before the house is to adjourn until 9:00 tomorrow morning. All those in favor signify by saying aye. Those opposed, nay. We are adjourned. Thank you.

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